

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference C62387PC BÖsmi	FOR FURTHER ACTION	
See Form PCT/IPEA/416		
International application No. PCT/EP2005/003888	International filing date (day/month/year) 13.04.2005	Priority date (day/month/year) 14.04.2004
International Patent Classification (IPC) or national classification and IPC INV. C07K14/54 C12N15/11		
Applicant F. HOFFMANN-LA ROCHE AG et al.		
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 7 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> (<i>sent to the applicant and to the International Bureau</i>) a total of sheets, as follows:</p> <ul style="list-style-type: none"> <input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions). <input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box. <p>b. <input type="checkbox"/> (<i>sent to the International Bureau only</i>) a total of (indicate type and number of electronic carrier(s)), containing a sequence listing and/or tables related thereto, in electronic form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>		
<p>4. This report contains indications relating to the following items:</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Box No. I Basis of the report <input type="checkbox"/> Box No. II Priority <input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability <input checked="" type="checkbox"/> Box No. IV Lack of unity of invention <input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement <input checked="" type="checkbox"/> Box No. VI Certain documents cited <input type="checkbox"/> Box No. VII Certain defects in the international application <input type="checkbox"/> Box No. VIII Certain observations on the international application 		
Date of submission of the demand 24.05.2006	Date of completion of this report 26.06.2006	
Name and mailing address of the international preliminary examining authority: European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized officer Strobel, A Telephone No. +49 89 2399- 7362	
		

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.
PCT/EP2005/003888

Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.

- This report is based on translations from the original language into the following language , which is the language of a translation furnished for the purposes of:
- international search (under Rules 12.3 and 23.1(b))
 - publication of the international application (under Rule 12.4)
 - international preliminary examination (under Rules 55.2 and/or 55.3)

2. With regard to the **elements*** of the international application, this report is based on (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report*):

Description, Pages

1-29 as originally filed

Sequence listings part of the description, Pages

30-42 as originally filed

Claims, Numbers

1-20 as originally filed

Drawings, Sheets

19-9/9 as originally filed

a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing

3. The amendments have resulted in the cancellation of:

- the description, pages
- the claims, Nos.
- the drawings, sheets/figs
- the sequence listing (*specify*):
- any table(s) related to sequence listing (*specify*):

4. This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- the description, pages
- the claims, Nos.
- the drawings, sheets/figs
- the sequence listing (*specify*):
- any table(s) related to sequence listing (*specify*):

* If item 4 applies, some or all of these sheets may be marked "superseded."

**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/EP2005/003888

Box No. IV Lack of unity of invention

1. In response to the invitation to restrict or pay additional fees, the applicant has:
 restricted the claims.
 paid additional fees.
 paid additional fees under protest.
 neither restricted nor paid additional fees.
2. This Authority found that the requirement of unity of invention is not complied with and chose, according to Rule 68.1, not to invite the applicant to restrict or pay additional fees.
3. This Authority considers that the requirement of unity of invention in accordance with Rules 13.1, 13.2 and 13.3 is
 complied with.
 not complied with for the following reasons:
see separate sheet
4. Consequently, this report has been established in respect of the following parts of the international application:
 all parts.
 the parts relating to claims Nos. .

Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes:	Claims	1-18, 19,20
	No:	Claims	
Inventive step (IS)	Yes:	Claims	1-18
	No:	Claims	19,20
Industrial applicability (IA)	Yes:	Claims	1-20
	No:	Claims	

2. Citations and explanations (Rule 70.7):

see separate sheet

**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/EP2005/003888

Box No. VI Certain documents cited

1. Certain published documents (Rule 70.10)
and / or
2. Non-written disclosures (Rule 70.9)

see separate sheet

Supplemental Box relating to Sequence Listing

Continuation of Box I, item 2:

1. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this report has been established on the basis of:
 - a. type of material:
 a sequence listing
 table(s) related to the sequence listing
 - b. format of material:
 in written format
 in computer readable form
 - c. time of filing/furnishing:
 contained in the international application as filed
 filed together with the international application in computer readable form
 furnished subsequently to this Authority for the purposes of search and/or examination
 received by this Authority as an amendment on
2. In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
3. Additional observations, if necessary:

**INTERNATIONAL PRELIMINARY
REPORT ON PATENTABILITY
(SEPARATE SHEET)**

International application No.

PCT/EP2005/003888

Re Item IV.

The separate inventions/groups of inventions are:

Claims 1-18:

Expression system comprising one or several nucleic acids that comprise

- a) at least one nucleic acid for a IL-15/Fc fusion protein
 - b) at least one promoter
- and
- c) at least one nucleic acid for a CD5 leader

Technical problem to be solved in view of the prior art: see point 3. under item V.

Claims 19, 20:

Use of a CD5 leader for the expression of a protein in CHO cells and their derivatives, in particular CHO-K1 cells.

Technical problem to be solved in view of the prior art: expression of any protein using the CD5 leader sequence. This problem is trivial in view of D2 which describes a CD5-Fc fusion protein.

They are not so linked as to form a single general inventive concept (Rule 13.1 PCT) for the following reasons:

For the requirement of unity to be fulfilled according to Article 17 and Rule 13.1 PCT, the different groups of inventions present in the claims have to be linked by a special common or corresponding technical feature. A special common technical feature is a technical feature that makes a contribution to the teaching of the prior art, i.e. it has to be novel and inventive. In the present case the common technical feature of the independent claims 1 and 19 consists of the use of a CD5 leader for expression of proteins. Said common technical feature is, however, not novel in view of D2 (Sutherland et al., see abstract and materials and methods section page 1807), in which publication the cDNA of said leader is fused to that of an IgG2 protein and expressed in murine cells.

Re Item V.

**INTERNATIONAL PRELIMINARY
REPORT ON PATENTABILITY
(SEPARATE SHEET)**

International application No.

PCT/EP2005/003888

1 Reference is made to the following documents:

- D1 : YON SU KIM ET AL: "Targeting the IL-15 receptor with an antagonist IL-15 mutant/Fc gamma 2a protein blocks delayed-type hypersensitivity" JOURNAL OF IMMUNOLOGY, THE WILLIAMS AND WILKINS CO. BALTIMORE, US, vol. 160, no. 12, 15 June 1998, pages 5742-5748
- D2 : SUTHERLAND ROBYN M ET AL: "Protective effect of CTLA4 Ig secreted by transgenic fetal pancreas allografts" TRANSPLANTATION (BALTIMORE), vol. 69, no. 9, 2000-05-15, pages 1806-1812
- D3 : KIM Y S ET AL: "IMMUNOGLOBULIN-CYTOKINE FUSION MOLECULES: THE NEW GENERATION OF IMMUNOMODULATING AGENTS" TRANSPLANTATION PROCEEDINGS, ORLANDO, FL, US, vol. 30, no. 8, 1998, pages 4031-4036
- D4: US5977318
- D5: US5977307

2. Novelty

Claim 1 is novel (fulfilment of Article 33(2) PCT) because no prior art document discloses the combination of an IL15 - Fc fusion protein with a CD5 leader sequence attached to it. As a consequence, dependent claims 2-10 and 12-14 novel

This also renders independent claim 11 as well as independent method claim 15 with dependent claims 16 and 17 and independent claim 18 novel.

3. Inventive step

D1 as well as D3 describe IL15-Fc fusion proteins. These fusion proteins are said to be characterised by a prolonged half life in the bloodstream, which is regarded as an advantageous feature in various therapeutic applications (D1, abstract lines 6-7, figure 5; D3, page 4033, right-hand column, last paragraph to page 4035, right-hand column, second paragraph with tables 2-4).

D1 moreover describes an expression construct of a mutant human IL15 cDNA fused to a murine Fc gamma 2 cDNA cloned into a eukaryotic expression plasmid carrying a CMV promoter, an Igkappa leader sequence (fused to the fusion protein construct) and a selection marker (D1, page 5743, left-hand column, second paragraph).

This means that the only difference between D1 and D3 on the one hand and claim 1 on the other hand is the presence, in claim 1, of a different signal peptide

**INTERNATIONAL PRELIMINARY
REPORT ON PATENTABILITY
(SEPARATE SHEET)**

International application No.

PCT/EP2005/003888

as a leader sequence, namely the leader sequence of the CD5 protein.

The technical effect of said difference is an increased secretion of the IL15-Fc fusion protein when expressed in eukaryotic cells, as can be derived from page 22, line 16 to page 23, line 13 of the description.

Given that neither D1 nor D2 mention the problem of increasing expression efficiency of the described fusion proteins and that D3, on the other hand, which describes a CD5-Fc fusion peptide which is secreted from producing cells, is directed to a different technical field, namely the role of a B7 receptor subtype, CTLA4, in pancreatic allograft rejection, thus not making a combination of either D1 or D3 with D2 obvious, the subject-matter of claim 1 is considered to be inventive (fulfilment of Article 33(2) PCT).

As a consequence, claims 2-18 are also inventive.

D4 and D5 describe fusion proteins expressed in CHO cells which are cloned into an expression vector comprising the coding sequence for a CD5 leader peptide that controls the secretion of the fusion proteins (D4, column 7 lines 18-35, column 10, lines 44-55; D5, column 20, line 64 - column 21, line 22 in connection with figure 8).

In view of D4 and D5, the additional features of the present claims 19 and 20 are either trivial or conventional in the art or within the competence of a skilled man seeking to improve the prior art processes mentioned in the search report and in the present opinion, so that the subject-matter of said claims also lacks an inventive step (Article 33(3) PCT)

Re Item VI

Certain documents cited

Certain published documents

Application No Patent No	Publication date (day/month/year)	Filing date (day/month/year)	Priority date (valid claim) (day/month/year)
EP20030750224	2005-07-05	2003-10-13	2002-10-14

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